

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE:	)	
	)	
ITT EDUCATIONAL SERVICES, INC., <i>et al.</i> <sup>1</sup>	)	Case No. 16-07207-JMC-7A
	)	
Debtors.	)	Jointly Administered
_____	)	
	)	
DEBORAH J. CARUSO, the CHAPTER 7	)	
TRUSTEE for ITT EDUCATIONAL	)	
SERVICES, INC., ESI SERVICE CORP. and	)	
DANIEL WEBSTER COLLEGE, INC.,	)	
	)	
Plaintiff,	)	Adversary No. 18-50100
	)	
vs.	)	
	)	
KEVIN MODANY, JOHN E. DEAN, C. DAVID	)	
BROWN II, JOANNA T. LAU, THOMAS I.	)	
MORGAN, JOHN VINCENT WEBER, JOHN F.	)	
COZZI, SAMUEL L. ODLE, and JERRY M.	)	
COHEN,	)	
	)	
Defendants.	)	

**TRUSTEE’S RESPONSE TO FORMER  
DIRECTORS’ MOTION TO WITHDRAW THE REFERENCE**

Plaintiff Deborah J. Caruso (“Plaintiff” or “Trustee”), as Chapter 7 trustee for ITT Educational Services, Inc., ESI Service Corp., and Daniel Webster College, Inc. (collectively, “ITT,” “Debtors,” or the “Company”) hereby responds to John E. Dean, C. David Brown II, Joanna T. Lau, Thomas I. Morgan, John Vincent Weber, John F. Cozzi, Samuel L. Odle, and Jerry M. Cohen’s (the “Former Directors”) motion for an order withdrawing the reference of the above-captioned adversary proceeding (“Action”) to the United States Bankruptcy Court for the Southern District of Indiana (the “Bankruptcy Court”).

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<sup>1</sup> The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

In this Action, the Trustee alleges that ITT's former CEO's and the Former Directors' breaches of their fiduciary duties to ITT caused it to precipitously close and damage ITT and its stakeholders. The Former Directors now seek to withdraw the reference to the Bankruptcy Court due to the Trustee's jury demand. The Trustee does not dispute that, without the Former Directors' consent, any eventual jury trial must be conducted in the United States District Court for the Southern District of Indiana (the "District Court"). Nor does the Trustee oppose withdrawing the reference to the Bankruptcy Court for this Action on this basis.

But the Trustee does oppose the Former Directors' motion to the extent it seeks to have the District Court preside over discovery and other pretrial matters. While the Former Directors' motion argues that the District Court must conduct a jury trial and/or enter final judgment on the Trustee's breach-of-fiduciary-duty claims, it fails to mention that the Trustee's Complaint also asserts a claim to equitably subordinate the creditor claim of ITT's former CEO under Sections 105(a) and 510 of the Bankruptcy Code. This equitable subordination claim is a core bankruptcy claim under 28 U.S.C. § 157(b) and is based on many of the same facts as the Trustee's breach-of-fiduciary-duty claim.

While the Former Directors are correct that "the Trustee's Complaint was only recently filed, and the Bankruptcy Court has taken no action in the litigation," the Debtors' jointly administered bankruptcy proceeding, Case No. 16-07207-JMC-7A, is currently pending before the Bankruptcy Court. Given the Trustee's core bankruptcy claim, which is intertwined with her breach-of-fiduciary-duty claim, and the Bankruptcy Court's familiarity with ITT's bankruptcy proceedings, the Trustee respectfully requests that, after withdrawing the reference, the District Court authorize Judge Carr to handle all pretrial proceedings in the case. This approach will avoid duplicative discovery and motions, and will promote judicial efficiency.

July 11, 2018

Respectfully submitted,

/s/ Ronald J. Schutz

Ronald J. Schutz

/s/ John C. Hoard

John C. Hoard

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### **CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2018, a copy of the foregoing *Trustee's Response to Former Directors' Motion to Withdraw the Reference* was filed electronically. Notice of this filing will be sent to the following party/parties through the Court's Electronic Case Filing System. Party/parties may access this filing through the Court's system.

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I further certify that on July 11, 2018, a copy of the foregoing *Trustee's Response to Former Directors' Motion to Withdraw the Reference* was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

None.

/s/ John C. Hoard

John C. Hoard

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